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AGENDA ITEM 4

TO: MEMBERS OF THE AD HOC BOARD GOVERNANCE COMMITTEE

- I. SUBJECT:** Board and Committee Meeting Procedures / Code of Ethics
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** Defer to the Committee
- IV. ANALYSIS:**

In June of 2001, the Board adopted a policy intended to reflect the CalPERS "rules of order" for the conduct of meetings of the Board and its committees. The "Rules and Guidelines for the Conduct of Meetings" incorporates provisions of the Bagley-Keene Open Meeting Act (the Act), the Public Employees' Retirement Law (PERL), the Board's Closed Session Policy, Roberts' Rules of Order (Roberts), and historic Board practice.

At its December 13, 2005 meeting, the Committee reviewed and discussed several specific areas related to governance. The Committee appeared to reach consensus on the following items. The Committee's comments and directions to staff are summarized below.

1. Formation of Subcommittee in Absence of a Quorum

Occasionally, a Board committee will not have a sufficient number of members to conduct business. In this instance, a sub-committee may be formed to conduct the business of the committee and present recommendations for action to the full Board. Under the Statement of Governance Principles, the Board President has authority to appoint subcommittees. If the President and the Vice-President are unavailable, however, there is no other delegated authority for the appointment of a sub-committee. This can present problems when there are not enough committee members present to form a quorum because of the timing involved.

Proposed Change: The Committee Chair may, in the absence of the Board President and Vice President, appoint a sub-committee to conduct

the business of the committee on the day of the noticed committee meeting.

2. Reconsideration Motion

The Board's Rules and Guidelines for the Conduct of Meetings allows a committee or the Board to “reconsider” a previous motion in the following circumstances: (1) only at the following regularly-scheduled meeting, (2) only upon motion of a member who voted in favor of the original action, and (3) *only at the Board or final-decision level*. Thus, a committee without final decision-making authority may not reconsider its original recommendation to the full Board.

Proposed Change: A committee may reconsider its decision to make a specific recommendation to the Board, provided that the Board has not yet taken action on the original recommendation of the committee.

3. Collegiality Between Board and Staff

The Committee Chair is responsible for conducting a committee meeting, “enforcing standards of civility as appropriate.”

Proposed Change: Add a list of specific sanctions or remedies that the Committee Chair may use to maintain appropriate decorum.

For example, under Roberts, the Chair may take a series of steps designed to remedy a breach of order – a form of progressive discipline.

- A. If a Board member commits a “slight” breach of order, the Chair raps the gavel lightly, points out the fault, and advises the Board member to avoid it.
- B. If a Board member continues to be out of order, or commits a serious breach of order, the Chair should normally warn the Board member, but the Chair (or any Board member) may, with or without a warning, “call the member to order.” At this point, the Chair states that the member is out of order and shall yield the floor (cease speaking). If the offending member had the floor, the Chair states the breach of order and puts the following question to the committee: “Shall the member be allowed to continue speaking?” The motion is not debatable.
- C. In cases of obstinate or grave breaches of order, the Chair can, after warning the Board member, “name” the offender. Roberts provides that this procedure should be used only in extreme

circumstances. The Chair asks the Committee Secretary to take down the objectionable or disorderly words used by the offender and then make a declaration to the member, clearly stating the nature of the abuse. If the member withdraws the offensive remarks or offers an apology, then the matter may be dropped, if the committee so chooses. In any event, any member may move (or the Chair may ask) that a penalty be imposed. The penalties could include requiring an apology, imposing a reprimand, or censure.¹

4. Closed Session Policy

The Legislature amended the Open Meeting Act to allow the Board to hold a closed session to consider the “development of rates and competitive strategy” for the Long Term Care program. (Gov. Code § 11126.)

Proposed Change: The Board’s Closed Session Policy will be updated to include amendments to the Open Meeting Act which allow the Board to hold a closed session to consider the “development of rates and competitive strategy” for the Long Term Care program.

5. Limitations on Speaking Time

The Open Meeting Act authorizes the Board to adopt a regulation limiting individual speakers to a specific amount of time.

Proposed Change: Draft a proposed regulation that will establish a specific time limit for speakers and also give the Chair or Presiding Officer the authority to waive that time limitation under certain circumstances.

6. Code of Ethics

The Committee agrees with the concepts in the Code of Ethics, but wishes to defer final review so that the provisions in the existing code may be compared with other CalPERS policies.

¹ Under Roberts, additional penalties of expulsion from the meeting, suspension of membership, and ultimately expulsion from the organization may be imposed. Under the Board’s existing policies, any person (including a member) who repeatedly refuses to abide by the Chair’s direction to maintain decorum, “and whose behavior is so disruptive as to prevent the body from conducting its business may be removed from the meeting room until his/her behavior is under control.” Rules and Guidelines for the Conduct of Meetings, at p. 9; see also Gov. Code, § 11126.5 (meeting room may be cleared when meeting is willfully interrupted by a group of persons whose removal cannot restore order and allow orderly conduct of business). The Board does *not* have authority to suspend or expel a Board member from the Board.

V. STRATEGIC PLAN:

This project supports Goal II of the 2005 Strategic Plan Goals which calls for CalPERS, as an organization, to “foster an environment that values quality, respect, diversity, integrity, openness, communication and accountability.”

VI. RESULTS/COSTS:

Memorializing the Board’s standards for meeting conduct will improve the efficiency of Board operations.

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